

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT C. WILSON; TIMOTHY
J. WATTS; CHRISTOPHER T.
CALLAGHAN and PAMELA
BURT, Individually,

Plaintiffs,

-vs-

Case No. 03-72154
Hon: AVERN COHN

TYCO INTERNATIONAL LTD., a foreign
corporation; TYCO INTERNATIONAL (U.S.),
INC., a domestic corporation; TYCO ACQUISITION
CORP., VII, a Nevada corporation; and EARTH
TECH EMS HOLDINGS, INC., a Nevada
corporation d/b/a EARTH TECH, Jointly
and Severally,

Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

On July 28, 2006 the Court granted in part and denied in part defendants' Motion for Summary Judgment in a written Memorandum and Order. In the conclusion the Court made clear its view of the issues for trial. Defendants have moved for reconsideration under L.R. 7.1. After careful review of the particular relevant documents, to wit:

Member Interest Purchase Agreement (including Exhibit 2)
Stock Purchase Agreement
Rule 26(a)(2) Report of Van E. Conway, CPA/ABU, CFE, CUA

as well as a transcript of the oral argument on the summary judgment motion, and defendants' brief in support of the motion, the Court is satisfied that defendants have not demonstrated a palpable defect by which the Court and the parties have been misled.

While the Conway report projects a generous view of “what might have been,” defendants’ real objections go to its credibility and weight. Plaintiffs are entitled to put their case to a jury. Whether their case will survive a JMOL at the conclusion of their proofs, in whole or in part, is an open question.

The motion for reconsideration is DENIED.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: August 23, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, August 23, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160